

08 CIV 37337

Micheal J. Frevola  
Christopher R. Nolan  
Lissa D. Schaupp  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, NY 10007-3189  
(212) 513-3200  
ATTORNEYS FOR PLAINTIFF  
OCEANOGRAFIA S.A. DE C.V.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

OCEANOGRAFIA S.A. DE C.V.,

Plaintiff,

-against-

MARINSA DE MEXICO, S.A. DE C.V.,

Defendant.



VERIFIED COMPLAINT

Plaintiff, Oceanografia S.A. de C.V. ("Oceanografia" or "Plaintiff"), by and through its attorneys, Holland & Knight LLP, for its verified complaint against Marinsa de Mexico, S.A. de C.V. ("Marinsa" or "Defendant"), alleges, upon information and belief, as follows:

1. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears and is a maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. At all times material herein, Oceanografia is and was a business entity organized and existing under the laws of the Mexico. Its corporate offices were and are located at S. Díaz Mirón 1012 altos., Col. Ma. De la Piedad, 96410 Coatzacoalcos, Veracruz, Mexico, and it

maintains a branch office and headquarters located at Av. 4 Oriente Lote 5 Maz. D. Puerto Isla del Carmen, C.P. 24140, Mexico.

3. Upon information and belief, at all times material herein, defendant Marinsa is and was a business entity organized and existing under the laws of Mexico with its principal place of business at Av. Adolfo Lopez Mateos No. 179, Col. Puerto Industrial y Pesquero Laguna Azul, 24140, Ciudad del Carman, Campeche, Mexico.

4. Oceanografia and Marinsa entered into two separate agreements in May and August, 2007 respectively for the chartering of two of Oceanografia's vessels, the CABOLLA APPALOOSA and the CABOLLA LIPIZANO ("First Tug Agreement" and "Second Tug Agreement," respectively).

5. The First Tug Agreement and the Second Tug Agreement were both entered into and executed in Mexico by two Mexican entities, for the use of Mexican registered vessels in Mexican waters, and therefore, both agreements are governed by Mexican law.

#### **HIRE OF THE CABOLLO APPALOOSA**

6. On or about May 10, 2007, Oceanografia, as owner, and Marinsa, as charterer, entered into an oral time charter party ("First Tug Agreement") for the chartering of Oceanografia's tugboat, the CABOLLA APPALOOSA ("Appaloosa") to provide tug services in conjunction with Marinsa's vessel, the MANUEL RODRIGO, in La Songa de Campeche.

7. La Songa de Campeche is an oil producing region in which tugboats are in high demand, and are hired on an hourly basis. The hourly hire rate for the Appaloosa to perform the work included in the First Tug Agreement is US\$585.00 per hour, and mobilization and demobilization fees are both US\$3,510.00.

8. The Appaloosa was hired by Marinsa on May 10, 2007 from 20:50 hours through 23:56 hours; on May 12, 2007 from 08:45 hours through 15:20 hours, 15:20 hours through 17:45 hours (standing by), and 17:45 through 21:15, and on May 17, 2007 from 13:00 hours through 19:20 hours. The hire due for these charter periods is US\$12,830.00 and is broken down via charter periods on Oceanografia invoice no. 21207, dated April 8, 2008, which is annexed hereto as Exhibit 1.

9. Oceanografia also is entitled to the local mobilization and demobilization fees associated with the charter periods set forth in paragraph "8," which total 3 mobilizations and 3 demobilizations for the three charter days amounting to US\$21,060.00 (6 x US\$3,510.00).

10. The preceding fees and costs set forth in paragraphs "8" and "9" are subject to a 15% tax under Mexican law.

11. Therefore, the total amount that Oceanografia is due from Marinsa for its chartering of the Vessel is as follows:

Total hire (May 10, 12 & 17, 2007):	\$12,830.00
Local Mobilization and Demobilization:	\$21,060.00
Subtotal:	\$33,890.00
15% Tax:	<u>\$ 5,083.50</u>
TOTAL:	\$38,973.50

12. On or about April 8, 2008, Oceanografia demanded payment from Marinsa for its charter of the Appaloosa in the amount of US\$38,973.50, which Marinsa has refused to pay.

#### **HIRE OF THE LIPIZANO APPALOOSA**

13. On or about August 17, 2007, Oceanografia, as owner, and Marinsa, as charterer, entered into an oral time charter party ("Second Tug Agreement") for the chartering of

Oceangrafia's tugboat, the CABOLLA LIPIZANO ("Lipizano") to provide tug services in conjunction with Marinsa's vessel, the ATLANTICO, in La Songa de Campeche.

14. La Songa de Campeche is an oil producing region in which tugboats are in high demand, and are hired on an hourly basis. The hourly hire rate for the Lipizano to perform the work included in the Second Tug Agreement is US\$585.00 per hour, and mobilization and demobilization fees are both US\$3,510.00.

15. The Lipizano was hired by Marinsa on August 17, 2007 from 12:55 hours through 15:15 hours, and on August 20, 2007 from 13:50 hours through 19:00 hours. The hire due for these charter periods is US\$4,387.50 and is broken down via charter periods on an Oceanografia invoice no. 21206, dated April 8, 2008, which is annexed hereto as Exhibit 2.

16. Oceanografia also is entitled to the local mobilization and demobilization fees associated with the charter periods set forth in paragraph "15," which total 2 mobilizations and 2 demobilizations for the two charter days amounting to US\$14,040.00 (4 x US\$3,510.00).

17. The preceding fees and costs set forth in paragraphs "15" and "16" are subject to a 15% tax under Mexican law.

18. Therefore, the total amount that Oceanografia is due from Marinsa for its chartering of the Vessel is as follows:

Total hire (August 17 & 20, 2007):	\$ 4,387.50
Local Mobilization and Demobilization:	\$14,040.00
Subtotal:	\$18,427.50
15% Tax:	<u>\$ 2,764.13</u>
TOTAL:	\$21,191.63

19. On or about April 8, 2008, Oceanografia demanded payment from Marinsa for the charter of the Lipizano in the amount of US\$21,191.63, which Marinsa has refused to pay.

**TOTAL CLAIM**

20. The Appaloosa Claim and the Lipizano Claim together total US\$60,165.13.

21. Upon information and belief it will take two years to bring this dispute to conclusion, resulting in the following estimated interest:

Interest:	\$ 7,219.82 (\$60,165.13 x 0.06/year for two years)
<u>Total Principal Claim:</u>	<u>\$60,165.13</u>
Total Sought:	<b><u>\$67,384.95</u></b>

22. Marinsa is not found within the Southern District of New York but does have assets, good or chattels within the jurisdiction, to wit: funds or accounts held in the name of Marinsa Instaladora y Constructora, S.A. de C.V. with, upon information and belief, the following financial institutions: Bank of America, N.A.; The Bank of New York; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, N.A.; JPMorgan Chase Bank, N.A.; UBS AG; Wachovia Bank, N.A.; Société Générale; Standard Chartered Bank; BNP Paribas; Calyon Investment Bank; American Express Bank; Commerzbank; ABN Amro Bank; Bank Leumi USA; Banco Popular; or any other financial institution within the Southern District of New York.

**WHEREFORE**, Oceanografia S.A. de C.V. prays:

1. That a summons with process of attachment and garnishment may issue against the defendant, Marinsa Instaladora y Constructora, S.A. de C.V.; and if defendant cannot be found, then that its goods, chattels and credits within the district, and particularly all bank accounts and other property of Marinsa Instaladora y Constructora, S.A. de C.V. with the

financial institutions noted above in paragraph 22, may be attached in an amount sufficient to answer plaintiff's claim;

2. That defendant Marinsa Instaladora y Constructora, S.A. de C.V. and any other person claiming an interest therein may be cited to appear and answer the matters aforesaid;

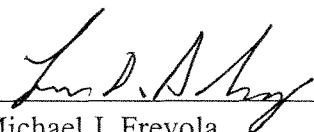
3. That judgment be entered in favor of Oceanografia S.A. de C.V. and against Marinsa Instaladora y Constructora, S.A. de C.V. in the amount of US\$67,384.95 (including estimated interest); and,

4. That this Court grant Oceanografia S.A. de C.V. such other and further relief which it may deem just and proper.

Dated: New York, New York  
April 18, 2008

HOLLAND & KNIGHT LLP

By:



Michael J. Frevola

Christopher R. Nolan

Lissa D. Schaupp

195 Broadway

New York, NY 10007-3189

Tel: (212) 513-3200

Fax: (212) 385-9010

*Attorneys for Plaintiff*

*Oceanografia S.A. de C.V.*

VERIFICATION

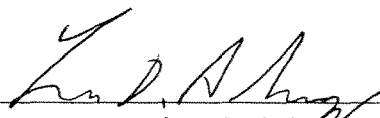
STATE OF NEW YORK )

:ss.:

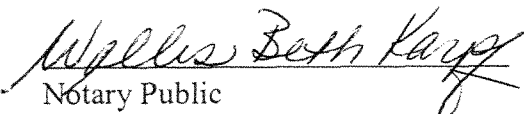
COUNTY OF NEW YORK )

LISSA D. SCHAUPP, being duly sworn, deposes and says:

I am associated with the law firm of Holland & Knight LLP, counsel for Oceanografia S.A. de C.V. ("Oceanografia"), plaintiff in the foregoing action. I have read the foregoing Verified Complaint and know the contents thereof, and the same are true and correct to the best of my knowledge. I have reviewed documentation provided to me by Oceanografia and corresponded with Oceanografia's representatives regarding this matter. I am authorized by Oceanografia to make this verification, and the reason for my making it as opposed to an officer or director of Oceanografia is that there are none within the jurisdiction of this Honorable Court.

  
Lissa D. Schapp

Sworn to before me this  
18th day of April, 2008

  
Notary Public

WALLIS BETH KARPF  
Notary Public, State Of New York  
No. 01KA6047092  
Qualified In New York County  
Commission Expires August 28, 20 10

# 5232137\_v1

# **EXHIBIT 1**





# OCEANOGRAFIA, S. A. DE C. V.

DIAZ MIRON No. 1012-ALTOS COL. MARIA DE LA PIEDAD TEL. 212-4730 TEL./FAX: 212-3755  
COATZACOALCOS, VER.

REG. FED. CTES. OCE-791214-330 REG. PEMEX 1172 REG. CAM. DE LA IND. DE LA CONST. 4855 REG. S.P.P. 17556

## FACTURA

Nº 21207

EXPEDIDA EN: CD. DEL CARMEN, CAMP.

08	Abr	08
DIA	MES	AÑO

VENDIDO A: MARINSA DE MEXICO S.A. DE C.V.

DOMICILIO: AV. ADOLFO LOPEZ MATEOS N° 179 COL. P.I.P. LAGUNA AZUL

CIUDAD: CD DEL CARMEN CAMPECHE CP 24140

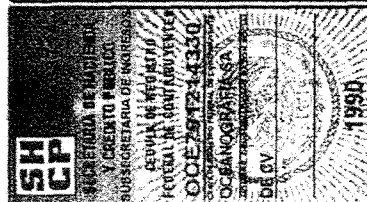
R.F.C.: MME-040924-8H1

PARTIDA	DESCRIPCION	CANTIDAD	PRECIO UNITARIO	IMPORTE
	RENTA DE LA EMBARCACION CABALLO APPALOOSA			
	TARIFA POR HORA	585.00 USD		
	MOBILIZACION			3,510.00
	10/05/2007 (20.50 - 23.56) - (03.06 HRS)			1,813.50
	DESMOBILIZACION			3,510.00
	MOBILIZACION			3,510.00
	12/05/2007 (08.45 - 15.20) - (06.35 HRS)			3,851.25
	12/05/2007 (15.20 - 17.45) - (2.25 HRS EN ESPERA)			1,412.75
	12/05/2007 (17.45 - 21.15) - (03.30 HRS)			2,047.50
	DESMOBILIZACION			3,510.00
	MOBILIZACION			3,510.00
	17/05/2007 (13.00 - 19.20) - (06.20 HRS)			3,705.00
	DESMOBILIZACION			3,510.00
				33,890.00

Ciudad del Carmen, Campeche a Martes, 08 de Abril de 2008

SON: ( Treinta y Ocho Mil Novecientos Setenta y Tres Dólares Americanos 50/100 USD)

IMPORTE TOTAL CON LETRAS	SUB-TOTAL	33,890.00
	I. V. A.	5,083.50
	TOTAL	38,973.50



LA REPRODUCCION NO AUTORIZADA DE ESTE DOCUMENTO CONSTITUYE UN DELITO EN LOS TERMINOS DE LAS DISPOSICIONES FISCALES IMPRESO POR ROSA DEL C. ROURA MEDINA Y/O IMPRESOS PEGASOS R.F.C. ROMR-500929-G23 C.U.R.P. ROMR-500929MCCRS08 AUTORIZACION INTERNET 6 DE MARZO DE 2002 DEL CARMEN, CAMPECHE; MEXICO.

PAGO EFECTUADO EN UNA SOLA EXHIBICION  
PARA EFECTOS FISCALES AL PAGO

FOLIO: 21,001 AL 22,000  
IMPRESO: 17/12/2007 VIGENCIA: 17/12/2009  
NUMERO DE APROBACION DEL SICOFI # 13135085

CFI-866-G

## **EXHIBIT 2**



**OCEANOGRAFIA, S. A. DE C. V.**  
 DIAZ MIRON No. 1012-ALTOS COL. MARIA DE LA PIEDAD TEL. 212-4730 TEL./FAX: 212-3755  
 COATZACOALCOS, VER.  
 REG. FED. CTES. OCE-791214-330 REG. PEMEX 1172 REG. CAM. DE LA IND. DE LA CONST. 4855 REG. S.P.P. 17556

VENDIDO A: MARINSA DE MEXICO S.A DE C.V

DOMICILIO: AV ADOLFO LOPEZ MATEOS N° 179 COL. P.I.P. LAGUNA AZUL

CIUDAD: CD DEL CARMEN CAMPECHE CP 24140 R.F.C.: MME-040924-8H1

### FACTURA

Nº 21206

EXPEDIDA EN: CD. DEL CARMEN CAMPE.

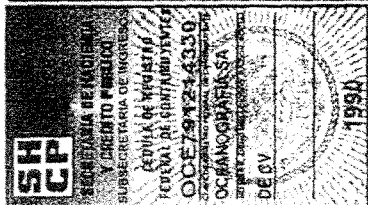
08	Abr	08
DIA	MES	AÑO

PARTIDA	DESCRIPCION	CANTIDAD	PRECIO UNITARIO	IMPORTE
	RENTA DE LA EMBARCACION CABALLO LIPIZANO			
	TARIFA POR HORA	585.00 USD		
	MOBILIZACION			3,510.00
	17/08/2007 (12:55 - 15:15) - (02:20 HRS)			1,365.00
	DESMOBILIZACION			3,510.00
	MOBILIZACION			3,510.00
	20/08/2007 (13:50 - 19:00) - (05:10 HRS)			3,022.50
	DESMOBILIZACION			3,510.00
				18,427.50

Ciudad del Carmen, Campeche a Martes, 08 de Abril de 2008

SON ( Veinte y Un Mil Ciento Noventa y Un Dólares Americanos 63/100 USD)

IMPORTE TOTAL CON LETRAS	SUB-TOTAL	18,427.50
	I. V. A.	2,764.13
	TOTAL	21,191.63



LA REPRODUCCION NO AUTORIZADA DE ESTE DOCUMENTO CONSTITUYE UN DELITO EN LOS TERMINOS DE LAS DISPOSICIONES FISCALES IMPRESO POR ROSA DEL C. ROURA MEDINA Y/O IMPRESOS PEGASOS R.F.C. ROMR-500929-G23 C.U.R.P. ROMR-500929MCCRS08 AUTORIZACION INTERNET 6 DE MARZO DE 2002 DEL CARMEN, CAMPECHE, MEXICO.

PAGO EFECTUADO EN UNA SOLA EXHIBICION  
 PARA EFECTOS FISCALES AL PAGO

FOLIO: 21,001 AL 22,000  
 IMPRESO: 17/12/2007 VIGENCIA: 17/12/2009  
 NUMERO DE APROBACION DEL SICOFI # 13135085

CFI-866/G1